

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

TREE PEAS IN A POD, LLC * CIVIL ACTION NO. 6:15-cv-02296
f/k/a RYAN PARRISH d/b/a *
THREE PEAS IN A POD * JUDGE REBECCA F. DOHERTY

VERSES * MAGISTRATE JUDGE
* CAROL B. WHITEHURST

ABABY, INC. d/b/a *
ABAY.COM, et al. *

DEFENDANT PAYPAL, INC.'S MOTION TO DISMISS

COMES NOW Defendant PayPal, Inc. (“PayPal”), pursuant to Fed. R. Civ. Pro. 12(b)(6), and respectfully submits this Motion to Dismiss. For the reasons discussed below, because Plaintiff has failed to plead that PayPal breached any term of the contract (“User Agreement”) between Plaintiff and PayPal, Plaintiff’s singular claim against PayPal for breach of contract should be dismissed.

1. This suit is an attempt by Plaintiff Three Peas in a Pod, LLC (“Three Peas”), a manufacturer and seller of custom fleece blankets and shower curtains, to hold PayPal liable for credit card chargebacks that were neither initiated by PayPal, nor decided by PayPal. The chargebacks at issue were initiated by the purchaser of Plaintiff’s products, Defendant ABABY, Inc. (“ABABY”), and the propriety of the chargebacks was determined by ABABY’s credit card companies. Despite these indisputable facts, Plaintiff baldly alleges that PayPal breached the PayPal User Agreement by failing to “properly or sufficiently investigate the claims made by ABABY, Inc. before initiating a chargeback on Plaintiff’s PayPal account.” Amended Complaint at ¶ 25.

2. As clearly stated in the User Agreement, PayPal neither initiates chargebacks (a fact that Three Peas admits in the Complaint), nor makes the determination who wins a disputed

chargeback. The User Agreement makes clear that “Chargebacks” are “request[s] that a buyer files directly with his or her debit or credit card company or debit or credit card issuing bank to invalidate a payment.” The User Agreement further states that PayPal does not make the determination regarding whether the chargebacks should be allowed: “[i]f a sender of a payment files a Chargeback, the credit card issuer, not PayPal, will determine who wins the Chargeback.” Finally, the User Agreement clearly and unambiguously discloses the risk of chargebacks: “Payments received in your Account may be reversed at a later time, for example, if such a payment is subject to a Chargeback. . . .”

3. In short, Plaintiff has failed to identify in the Amended Complaint any term of the User Agreement that PayPal is alleged to have breached relating to the chargebacks at issue in this case. Thus, Plaintiff’s singular claim against PayPal for breach of contract should be dismissed.

4. The instant Motion to Dismiss is supported by PayPal’s Memorandum in Support of Motion to Dismiss, which is being filed with the Court and served upon opposing counsel contemporaneously with the filing of this Motion. Further, this Motion is supported by the following Exhibits:

Exhibit A: Complaint;

Exhibit B: Amended Complaint;

Exhibit C: PayPal User Agreement (dated November 18, 2014); and

Exhibit D: PayPal User Agreement (dated May 1, 2015).

ACCORDINGLY, because Three Peas has failed to plead that PayPal breached any term of the User Agreement, Three Peas' singular claim against PayPal for breach of contract fails as a matter of law and should be dismissed.

This the 17th day of June, 2016.

Respectfully submitted,

PAYPAL, INC.

s/ Tammye C. Brown

One of Its Attorneys

OF COUNSEL:

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CERTIFICATE OF SERVICE

Counsel for Defendant PayPal, Inc. do hereby certify that on this day I electronically filed a copy of the **MEMORANDUM IN SUPPORT OF PAYPAL INC.'S MOTION TO DISMISS** with the Clerk of Court using CM/ECF system which will send notification of such filing to all counsel of record registered to receive ECF filings.

Further, Counsel hereby certifies that I have mailed by United States Postal Service the document to the following: None.

This the 17th day of June, 2016.

s/ Tammye C. Brown
One of Its Attorneys